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Docket No. 4577-4000US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Charles W. KLEIN & Peter D. HERGER

Group Art Unit: 3772

Serial No.: 10/759,998

Examiner: Michael Brown

Filed: 1/16/2004

For: APPARATUS AND METHOD FOR SELECTIVELY TRANSMITTING
VIBRATIONS TO AN INDIVIDUAL SITUATED ON A SUPPORT SURFACE

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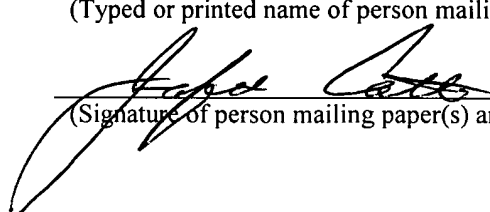
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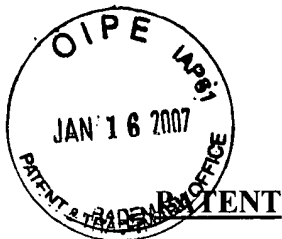
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Docket No: 4577-4000

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s) : Charles W. Klein **Confirmation No.:** 8676
Peter D. Herger
Serial No. : 10/759,998 **Group Art Unit:** 3772
Filed : January 16, 2004 **Examiner:** Michael A. Brown
For : Apparatus and Method for Selectively Transmitting Vibrations to an
Individual Situated on a Support Surface

COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, VA 22313-1450

RESPONSE TO RESTRICTION REQUIREMENT

Applicants submit this response to the office action of December 14, 2006, which required restriction between the following two groups of claims: "Group I, claims 1-40, Figures 1-2 and Group II, claims 41 – 53, Figure 3."

Pursuant to 37 CFR § 1.143, applicants traverse this restriction requirement for the reasons stated below. For completeness, applicants provisionally elect Group I, claims 1-40, for prosecution on the merits.

The office action does not provide a substantive basis to require restriction in accordance with 35 U.S.C. § 121. The office action also is incomplete and fails to provide a clear and detailed basis for the restriction requirement in accordance with MPEP §§ 814 - 817.

The office action does not provide a classification for each Group and does not even allege that the Groups are classified differently.

The office action does not provide a clear demarcation between the identified restricted inventions. There is no recitation in the office action of the limitations in the claims that are considered to support the conclusory statement that "... Group II is patentable over

Group I.” For example, the absence of any explanation suggests that restriction could be based on merely the type of claims in each group, e.g. “device” in claims 1-4 and “apparatus” and “method” in claims 41 – 53.

The only factual basis stated in the office action for the restriction requirement is that claims 41-53 are associated with Figure 3 of the application and claims 1-40 are not, but are associated with Figures 1 and 2. However, this does not appear to be factually correct nor is it a basis for the asserted restriction. Figure 3 is described at page 29, lines 10-11 to illustrate “an alternative embodiment of the invention wherein the vibrating device is used as a selective massaging device.” However, only claims 10 – 11 are specifically directed to only a selective massaging device and it has been included in Group I, not in Group II which is associated with Figure 3.

Figure 3 does not specifically refer to the vibrations functioning as an “alert” for the user, but merely providing selective massaging. However, all of the claims in Group II refer to “vibration alert” or a “targeted alert.” Also, the features described in Figure 3 would be embraced by most of the claims in both Groups.

In contrast, Figures 1 and 2 describe embodiments that are embraced by claims in the designated Group II.

Since no legally recognized basis has been shown to support the restriction and because no greater burden has been established to examine all of the claims together, it is respectfully requested that the restriction requirement be reconsidered and withdrawn and all claims examined in this application.

PATENT

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AUTHORIZATION

The Commissioner is hereby authorized to charge any additional fees which may be required by this response, or credit any overpayment to Deposit Account No. 13-4500, Order No. 4577-4000.

In the event that an extension of time is required, such extension is hereby petitioned and the Commissioner is further requested to grant that petition for such length extension of time needed to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to the above Deposit Account.

Respectfully submitted,

MORGAN & FINNEGAN, L.L.P.

Dated: January 16, 2007

By:


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